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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 854

MARVIN FEINBERG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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In its opposition, the United States ignores both the Court of Appeals' order, recalling its mandate and staying reissuance thereof, and, also, U.S.C. Title 28, § 2101(f), authorizing that very procedure to "enable the party aggrieved to obtain a writ of certiorari from the Supreme Court" (Appendix E, annexed to the Petition, at p. 47; and the statute, to which reference is made at P. 4 of the Petition). Accordingly, the United States' observation is incorrect, to the effect that the petition was filed "61 days out of time under Rule 22 of the rules of this court" (United States' Memorandum, pp. 1-2). The petition was filed in time (see discussion, Petition, at P. 4).

Moreover, the United States overlooks that the Court of Appeals' mandate, "opinion and judgment" was not issued until a whole month after rendition of its order denying rehearing—i.e., October 25, 1967 (Appendix C, annexed to Petition, at P. 44). Since the petition for

certiorari was filed on November 24, 1967, it was, therefore, in time, on that score, too.

Accordingly, the precise circumstances under which *Commissioner* v. *Estate of Bedford* (325 U. S. 283), was decided by this Court, are now again duplicated. The issue is not what would be the case had judgment and mandate come down together, and had not a petition for certiorari been filed within the further stay allowed therefor by the Court of Appeals, but whether, given all of these circumstances, and in the face of a clear record—staying the operation of the judgment, and keeping the time of the Petitioner open—his petition should fail of consideration on its merits.

Furthermore, this being a criminal case, the time for application to this court, is fixed only by its own rules, dispensation of which lies within its own discretion.

Finally, we know of no basis for the observations made by the United States in the footnote at P. 2 of its Memorandum. Our information is otherwise. The Court of Appeals, by its order, showed that it also thought otherwise. But, since the foregoing observations would seem to be dispositive, we do not dwell further upon the United States' collateral observations, which are without support in the record.

As to the merits, it is plain that the issue as to a "speedy trial" under the Sixth Amendment, with reference to pre-indictment delay, is of first impression in this Court.

We therefore pray that this Court grant certiorari, so that, in the public interest, and that of Petitioner as well, the issue may be definitively determined by this Court.

Respectfully submitted,

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